

**EXHIBIT B - 1**  
Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

MORGAN ART FOUNDATION LIMITED

Plaintiff

vs.

CA No. 1:18-cv-4438-AT-BCM

MICHAEL MCKENZIE, AMERICAN

IMAGE ART, JAMIE THOMAS, and

JAMES W. BRANNAN as Personal Representative  
of the Estate of Robert Indiana

Defendants

- - - - - x

(COMPLETE CAPTION ON NEXT PAGE)

ALL PARTICIPANTS APPEARING VIA ZOOM

VIDEO DEPOSITION of JAMIE L. THOMAS

Friday, November 12, 2021 - 9:52 a.m.

Reporter: Jill K. Ruggieri, RPR, RMR, FCRR, CRR

## **EXHIBIT B - 2**

## **EXHIBIT B - 3**

1 MICHAEL MCKENZIE and AMERICAN IMAGE ART  
2 Cross-claimants  
3 v.  
4 JAMES W. BRANNAN as Personal Representative  
of the Estate of Robert Indiana

### Crossclaim Defendant

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**EXHIBIT B - 4**  
Page 4

1 APPEARANCES:

2

3 Quinn Emanuel Urquhart & Sullivan, LLP

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17 Counsel for Jamie L. Thomas

18 -and-

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25

**EXHIBIT B - 5**  
Page 5

1 Markham Read Zerner LLC  
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3 1 Commercial Wharf West  
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6 bzerner@markhamreadzerner.com  
7 Counsel for Michael McKenzie, doing business as  
8 American Image Art  
9  
10  
11 Videographer: Wes Schwartz  
12 Also present: Bernadette Scott  
13  
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**EXHIBIT B - 6**  
 Page 8

1	P R O C E E D I N G S	09:49:27
2		09:49:27
3	THE VIDEOGRAPHER: We are now on	09:52:27
4	the record. This begins Media Unit No. 1 in	09:52:27
5	the deposition of Jamie Thomas in the matter of	09:52:30
6	Morgan Art Foundation v. McKenzie, et al.	09:52:34
7	Today is November 12, 2021. The	09:52:38
8	time is 9:52 a.m. This deposition is being	09:52:42
9	taken virtually at the request of Quinn Emanuel	09:52:48
10	Urquhart & Sullivan, LLP. The videographer is	09:52:51
11	Wes Schwartz of Magna Legal Services and the	09:52:56
12	court reporter is Jill Ruggieri of Magna Legal	09:52:58
13	Services.	09:53:00
14	Will all counsel and all parties	09:53:01
15	present state their appearance and whom they	09:53:02
16	represent.	09:53:05
17	MR. RAKOWER: Ryan Rakower from	09:53:05
18	Quinn Emanuel on behalf of Morgan Art	09:53:07
19	Foundation.	09:53:10
20	MS. ZERNER: Bridget Zerner of	09:53:14
21	Markham Read Zerner LLC for Michael McKenzie,	09:53:15
22	doing business as American Image Art.	09:53:19
23	MS. SERPE: Silvia L. Serpe for	09:53:21
24	Serpe LLC. I'm here for the witness today	09:53:22
25	along with my co-counsel, John Frumer.	09:53:27

**EXHIBIT B - 7**  
 Page 25

1	A	I don't -- I don't understand the	10:14:29
2		question.	10:14:30
3	Q	Did you ever have conversations with	10:14:36
4		Mr. Indiana about the application of his	10:14:38
5		signature on artworks?	10:14:40
6	A	About the application? Like whether	10:14:43
7		he would use a pencil or -- I --	10:14:46
8	Q	Did you have any conversations with	10:14:52
9		Mr. Indiana about anyone other than Mr. Indiana	10:14:53
10		applying his signature on artworks?	10:14:56
11	A	I just recall one time that he had	10:15:02
12		said a machine of some sort signed his name for	10:15:04
13		him and how much easier that was than having to	10:15:11
14		do it on his own, especially if he didn't feel	10:15:16
15		like signing that day.	10:15:18
16	Q	When was that? When did you have	10:15:23
17		that conversation with him?	10:15:25
18	A	I don't recall.	10:15:26
19	Q	Was that conversation had in person	10:15:31
20		or over the phone?	10:15:32
21	A	It was in person.	10:15:34
22	Q	Where was that conversation held?	10:15:35
23	A	At the Star of Hope.	10:15:38
24	Q	Was anyone else there?	10:15:42
25	A	Not that I recall.	10:15:44

**EXHIBIT B - 8**  
Page 26

1	Q	Was this before or after you became	10:15:46
2		Mr. Indiana's power of attorney?	10:15:48
3	A	I don't recall if that was before or	10:15:52
4		after.	10:15:54
5	Q	Could this conversation have been	10:15:59
6		held in 2018?	10:16:01
7		MS. SERPE: Form objection.	10:16:02
8		Calls for speculation.	10:16:03
9	A	I don't recall when it was. It was	10:16:07
10		one time. I didn't really think about it.	10:16:10
11	Q	And you said that Mr. Indiana said	10:16:28
12		that a machine had signed his name.	10:16:30
13		Did Mr. Indiana tell you that he	10:16:32
14		used the machine to sign his name?	10:16:34
15	A	I don't recall if he -- I don't	10:16:36
16		recall how he said he -- that happened. I just	10:16:37
17		recall the conversation.	10:16:40
18	Q	Did Mr. Indiana tell you that he had	10:16:44
19		authorized somebody else to use a machine to	10:16:46
20		sign his name?	10:16:48
21	A	He didn't come right out and say	10:16:49
22		"authorize." He just said that it happened and	10:16:52
23		how that made it easier. But I didn't question	10:16:55
24		the authorization just because he said it had	10:16:59
25		happened and he didn't complain, so -- in fact,	10:17:04

**EXHIBIT B - 9**  
Page 27

1	he seemed like it was something he was happy	10:17:08
2	about, so.	10:17:10
3	Q Did Mr. Indiana tell you who he	10:17:13
4	believed used the machine to sign his name on	10:17:16
5	an artwork?	10:17:17
6	MS. SERPE: Form objection.	10:17:19
7	A Yes, it was Michael, Michael	10:17:22
8	McKenzie.	10:17:24
9	Q Did Mr. Indiana tell you what artwork	10:17:28
10	his name was signed on?	10:17:31
11	A I don't recall. I don't recall that.	10:17:35
12	Q Mr. Thomas, I want to show you a	10:18:10
13	document. Can we pull up Tab H?	10:18:12
14	A Going to take me a minute to get this	10:18:21
15	going.	10:18:23
16	Q It's going to show up on your screen,	10:18:23
17	Mr. Thomas. And I've sent your counsel the --	10:18:25
18	this document in advance, so if you need to	10:18:29
19	review the full thing, you can. But I'll	10:18:31
20	direct you to a few pages, and you just let me	10:18:34
21	know if you need to look at something else.	10:18:36
22	But for now, let's start with	10:18:40
23	the cover page. Do you --	10:18:41
24	A Does it have a tab number, by any	10:18:42
25	chance?	10:18:44

**EXHIBIT B - 10**  
 Page 73

1	Do you still believe this is	11:30:26
2	true and accurate?	11:30:28
3	A That Mr. Indiana signed aluminum	11:30:29
4	LOVEs to me.	11:30:33
5	Q The response states: "Thomas states	11:30:39
6	that Mr. Indiana signed one or more of McKenzie	11:30:41
7	or AIA's Aluminum LOVE Works on or about	11:30:44
8	February 14, 2016."	11:30:49
9	A Yes.	11:30:52
10	Q That response remains true and	11:30:53
11	accurate?	11:30:55
12	A Yes.	11:30:55
13	Q Okay.	11:30:56
14	So did you observe Mr. Indiana	11:30:56
15	signing an aluminum LOVE work on or around	11:31:00
16	February 14, 2016?	11:31:03
17	A Yes.	11:31:05
18	Q And that aluminum LOVE work was	11:31:07
19	created by Mr. McKenzie?	11:31:09
20	A Yes, it was part of the Book of LOVE	11:31:14
21	series, but it was created before that, before	11:31:16
22	the agreement in 1999.	11:31:22
23	Q Can you tell me about that meeting	11:31:33
24	where you observed Mr. Indiana signing an	11:31:36
25	aluminum LOVE work that was prepared by	11:31:38

**EXHIBIT B - 11**  
 Page 82

1	of the Dylan Works?	11:42:14
2	A Well, I mean, he signed them. I	11:42:18
3	watched him sign them. His lawyer knew about	11:42:21
4	it. He knew about it, my lawyer knew about it.	11:42:24
5	Q So sitting here today, do you believe	11:42:29
6	that Mr. Indiana authorized any of the Dylan	11:42:31
7	Works?	11:42:34
8	A Again, he signed them, his lawyer	11:42:36
9	knew about them, my lawyer knew about them.	11:42:40
10	Q Let's put aside whether Mr. Indiana	11:42:48
11	signed the works, which we'll get into in a	11:42:51
12	second.	11:42:56
13	I'm asking you, do you have any	11:42:56
14	knowledge as to whether Mr. Indiana authorized	11:42:57
15	any of the Dylan Works?	11:43:00
16	A I don't know --	11:43:02
17	MS. SERPE: Asked and answered.	11:43:07
18	A I don't know if he authorized any of	11:43:07
19	the art he did if you're asking me like that.	11:43:08
20	I wouldn't be able to answer that for any of	11:43:09
21	his work.	11:43:11
22	Q So, Mr. -- Mr. Thomas, you provided a	11:43:14
23	sworn response in October of 2019 that you have	11:43:17
24	no knowledge as to whether such authorization	11:43:21
25	occurred, correct?	11:43:25

**EXHIBIT B - 12**  
 Page 167

1	researching the word "wine" for Mr. Indiana.	14:29:55
2	A Yes.	14:29:58
3	Q And I wanted to know if at that time	14:29:59
4	Mr. Indiana had indicated to you in any way	14:30:03
5	that he was working with Mr. McKenzie on a wine	14:30:06
6	project.	14:30:09
7	A Well, the wine project they were	14:30:13
8	working on together. The actual homework	14:30:15
9	assignment for me to do after that, I don't	14:30:20
10	recall him, you know, coming right out and	14:30:22
11	saying I want to do another project with	14:30:27
12	Michael, no. He didn't come right out and say	14:30:29
13	that.	14:30:32
14	Q Okay.	14:30:36
15	But they were --	14:30:36
16	A Do you understand what I'm saying?	14:30:36
17	Q I think so. Sorry, I didn't mean to	14:30:38
18	interrupt you. I want you to finish before	14:30:40
19	I --	14:30:42
20	What I got from the beginning of	14:30:42
21	that was you did understand Mr. Indiana and	14:30:43
22	Mr. McKenzie to be working on a wine project?	14:30:46
23	A Yes.	14:30:57
24	Q Did Mr. Indiana ever have you	14:31:00
25	personally review the accountings for any of	14:31:03

**EXHIBIT B - 13**  
 Page 172

1	Q	And to your understanding, did	14:35:44
2		Mr. Indiana authorize the Dylan project?	14:35:45
3		MR. RAKOWER: Objection. Asked	14:35:53
4		and answered.	14:35:54
5	Q	Is the problem "authorize" holding	14:35:59
6		you up?	14:36:02
7	A	Yeah, that one's just like --	14:36:03
8	Q	Okay. I'll rephrase the question.	14:36:06
9		From your observations, did you	14:36:09
10		observe Mr. Indiana working with Mr. McKenzie	14:36:12
11		on pieces of artwork involving books from Bob	14:36:16
12		Dylan?	14:36:21
13	A	He signed -- he signed the prints	14:36:23
14		that Mr. McKenzie brought, and he accepted	14:36:26
15		these books as gifts.	14:36:31
16	Q	The books that we see in this image	14:36:33
17		that involve -- that says "Like a Rolling	14:36:35
18		Stone, Robert Indiana on Dylan"?	14:36:38
19	A	Yes.	14:36:41
20	Q	Okay. Thank you.	14:36:42
21		Is this another one of those	14:36:49
22		books?	14:36:51
23		Is this the black one that you	14:36:51
24		thought looked better?	14:36:52
25	A	Yes, I preferred the black one.	14:36:54

**EXHIBIT B - 14**  
Page 184

1	Q	Okay.	14:50:16
2		All right. If you move to	14:50:21
3		page 17.	14:50:22
4	A	Yeah.	14:50:26
5	Q	This is a response to Interrogatory	14:50:30
6		No. 11, and I'll read your response. If you	14:50:32
7		need to go back and check the interrogatory	14:50:36
8		request, let me know. But your response says:	14:50:37
9		"It is Thomas's position that based on Thomas's	14:50:39
10		discussions with Mr. Indiana when Thomas was	14:50:42
11		attorney-in-fact for Mr. Indiana, Mr. Indiana	14:50:44
12		authorized WINE."	14:50:49
13		Is that a true and accurate	14:50:51
14		statement?	14:50:52
15	A	Yes.	14:50:54
16	Q	Is that WINE that Mr. Indiana was	14:50:56
17		working with Mr. McKenzie on?	14:50:58
18	A	Yes.	14:51:03
19	Q	And on the next page -- I'm skipping	14:51:06
20		to your response. Like I said, let me know if	14:51:13
21		you need to see something else, but here it	14:51:15
22		says: "It is Thomas's position that based on	14:51:18
23		photographs and other documents that have been	14:51:21
24		produced in this litigation and Thomas's	14:51:23
25		discussions with Mr. Indiana when Thomas was	14:51:25

**EXHIBIT B - 15**  
 Page 197

1	play. I believe you're there. I'm not trying	15:17:11
2	to trick you.	15:17:13
3	A No, I --	15:17:14
4	Q I'm just trying to get a date. So	15:17:14
5	let me play it a little bit. I'll show you.	15:17:17
6	Hold on. Let me move it ahead.	15:17:19
7	(Video played.)	15:17:22
8	Q Do you see yourself there?	15:17:23
9	A Yeah.	15:17:26
10	Q Okay.	15:17:26
11	A I don't recall that.	15:17:33
12	Q And do you recognize that as	15:17:34
13	Mr. McKenzie in the buffalo plaid?	15:17:36
14	A Yes, yeah.	15:17:40
15	Q I see there you're getting a pillow	15:17:53
16	for Mr. Indiana.	15:17:55
17	A Yeah.	15:17:56
18	Q Okay.	15:17:57
19	(Video played.)	15:17:57
20	Q So I know it's jumping around.	15:18:11
21	Do you recognize this piece in	15:18:15
22	front of Mr. Indiana?	15:18:17
23	A Yes.	15:18:19
24	Q What do you recognize that as?	15:18:20
25	A It was a bunch of Mr. Indiana's work	15:18:22

**EXHIBIT B - 16**  
 Page 198

1	all on one -- all in one print, 12 --	15:18:29
2	Q Do you recall it -- oh, I'm sorry,	15:18:35
3	what's that?	15:18:37
4	A Twelve images, Robert Indiana images	15:18:38
5	all on one print.	15:18:43
6	Q Do you recall if it was called the	15:18:45
7	Retrospective?	15:18:47
8	A I don't recall what the name was.	15:18:50
9	Q Okay.	15:18:53
10	A It possibly could have been called	15:18:54
11	that.	15:18:55
12	Q I'm sorry, did I cut off the answer	15:18:56
13	for the court reporter? I didn't mean to with	15:18:58
14	the video.	15:19:00
15	A It -- it could have -- oh, sorry.	15:19:02
16	Q You can go ahead.	15:19:06
17	Did you have a comment,	15:19:10
18	Mr. Thomas?	15:19:11
19	A It could have been called that. I --	15:19:12
20	I don't recall the name.	15:19:13
21	Q Okay.	15:19:18
22	And I'm just -- I'm just moving	15:19:24
23	ahead for time.	15:19:31
24	(Video played.)	15:19:32
25	Q Do you recognize this as a piece that	15:19:46

**EXHIBIT B - 17**  
 Page 199

1	Mr. Indiana worked with Mr. McKenzie on?	15:19:56
2	A Yes.	15:20:02
3	Q And getting out of that, so --	15:20:11
4	Mr. McKenzie came to Vinalhaven with prints for	15:20:15
5	Mr. Indiana or other artwork more than once,	15:20:19
6	correct?	15:20:23
7	A Correct.	15:20:24
8	Q And did he also at times bring	15:20:26
9	artists' proofs to Mr. Indiana?	15:20:39
10	A Yes.	15:20:49
11	Q And did the work that Mr. Indiana	15:21:05
12	worked with Mr. McKenzie on include ART, A-R-T?	15:21:07
13	A I recall that piece, yes.	15:21:15
14	Q And do you recall them working on	15:21:19
15	EAT, E-A-T?	15:21:21
16	A Sounds familiar.	15:21:26
17	Q Did you ever see Mr. Indiana display	15:21:27
18	any of the works from Mr. McKenzie at the Star	15:21:29
19	of Hope?	15:21:32
20	A Yes.	15:21:36
21	Q Do you recall which ones?	15:21:36
22	A BRAT, the Dylan Works books, the	15:21:44
23	alphabet. Think what else. Hopes. WORD and	15:21:51
24	WALL, maybe. I can't be sure. WORD,	15:22:06
25	certainly. EAT.	15:22:11

**EXHIBIT B - 18**  
 Page 200

1	Trying to think of another one	15:22:21
2	right off the top of my head, but I can't	15:22:22
3	remember what it was called.	15:22:25
4	That's all I got right now.	15:22:28
5	Sorry.	15:22:30
6	Q Did Indiana ever comment on those	15:22:33
7	works to you?	15:22:35
8	A Did he ever comment on them? Not	15:22:39
9	that I recall. I wouldn't be surprised if he	15:22:44
10	did, but I don't recall if he did.	15:22:47
11	Q He was putting them on display. Did	15:22:54
12	you understand that he liked them?	15:22:56
13	MS. SERPE: Form objection.	15:22:58
14	A Yeah, I mean, he had them on display.	15:22:59
15	I can't answer his -- his opinion one way or	15:23:08
16	the other.	15:23:12
17	Q Okay. I was just checking if he ever	15:23:12
18	expressed it to you.	15:23:14
19	A Not that I recall.	15:23:16
20	Q Do you -- do you know why	15:23:31
21	Mr. McKenzie got that -- purchased a home in	15:23:32
22	Vinalhaven with the studio?	15:23:36
23	A Why he purchased a home there?	15:23:40
24	Q Yes.	15:23:45
25	A To have a print shop and he would be	15:23:46

**EXHIBIT B - 19**  
Page 207

1

C E R T I F I C A T E

2

I, Jill K. Ruggieri, Registered Merit

3

Reporter and Certified Realtime Reporter, do certify

4

that the deposition of JAMIE L. THOMAS, in

5

the above-captioned matter, on November 12, 2021,

6

was stenographically recorded by me; that the

7

witness provided satisfactory evidence of

8

identification, as prescribed by Executive Order 455

9

(03-13) issued by the Governor of the Commonwealth

10

of Massachusetts, before being sworn by me, a Notary

11

Public in and for the Commonwealth of Massachusetts;

12

that the transcript produced by me is a true record

13

and accurate record of the proceedings to the best

14

of my ability; that I am neither counsel for,

15

related to, nor employed by any of the parties to

16

the above action; and further that I am not a

17

relative or employee of any attorney or counsel

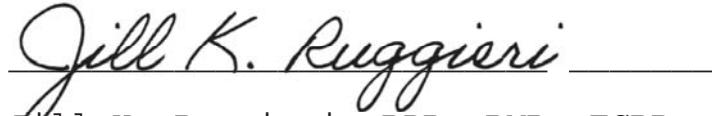
18

employed by the parties thereto, nor financially or

19

otherwise interested in the outcome of the action.

20



21

Jill K. Ruggieri, RPR, RMR, FCRR, CRR

22

23

24 Transcript review was requested of the reporter.

25

**EXHIBIT B - 20**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MORGAN ART FOUNDATION LTD.,

Plaintiff,

-against-

MICHAEL MCKENZIE,  
AMERICAN IMAGE ART, JAMIE THOMAS,  
and JAMES W. BRANNAN as Personal  
Representative of the Estate of Robert Indiana,

Defendants.

Case No. 1:18-cv-04438-AT-BCM

MICHAEL MCKENZIE  
and AMERICAN IMAGE ART,

Counter-Claimants,

-against-

MORGAN ART FOUNDATION LTD.,

Counterclaim Defendant.

JAMES W. BRANNAN as Personal Representative of  
the Estate of Robert Indiana,

Counter-Claimant,

-against-

MORGAN ART FOUNDATION LTD.,  
FIGURE 5 ART LLC, SHEARBROOK (US), LLC,  
RI CATALOGUE RAISONNÉ LLC,  
and SIMON SALAMA-CARO,

Counterclaim Defendants.

**EXHIBIT B - 21**

MICHAEL MCKENZIE  
and AMERICAN IMAGE ART,

Counter-Claimants,  
-against-

JAMIE THOMAS and JAMES W. BRANNAN as  
Personal Representative of the Estate of Robert  
Indiana,

Counterclaim Defendants.

**CORRECTIONS TO TRANSCRIPT OF VIDEO DEPOSITION OF  
JAMIE L. THOMAS DATED NOVEMBER 12, 2021**

JAMIE L. THOMAS, pursuant to 28 U.S.C. § 1746, hereby declares:

1. I have reviewed the transcript of my deposition taken in the above captioned matter on November 12, 2021, and offer the following changes as if still under oath:

Page	Line	Original Text	Corrected Text
4	19-24	Christie & Young PC John D. Frumer, Esq. 50 Congress Street, Suite 430 Boston, Massachusetts 02109 617.854.8315 <a href="mailto:jdfrumer@christieyoung.com">jdfrumer@christieyoung.com</a>	Law Office of John D. Frumer P.O. Box 74 Brunswick, ME 04011 <a href="mailto:jdfrumer@frumerlaw.com">jdfrumer@frumerlaw.com</a>
13	19	Just high school diploma.	High school diploma.
15	13	on cartoons	cartoons
18	2	I mean, just	I mean, I just
18	10	needed help	needed help with my stepfather.
35	13	- don't	- I don't
44	6	Little cold.	I have a little cold.

**EXHIBIT B - 22**

73	3-4	That Mr. Indiana signed aluminum LOVEs to me.	That Mr. Indiana signed aluminum LOVEs to me?
84	18	authorization, I could	authorization, no but I could
96	2	he	I
106	11-12	I didn't even get down	I didn't even respond
144	5	hadn't been being paid	hadn't been paid
157	23	Beau	Bo
160	2	officially	unofficially
165	18-19	the Bach Book of Love.	the Book of Love.
199	23	Think what else. Hopes.	I have to think what else. HOPE.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 1, 2021



Jamie L. Thomas